

**DISTRICT JUDGE'S CIVIL MINUTES
IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA – PHOENIX**

U.S. District Judge: David G. Campbell

Date: April 29, 2019

Case Number: MD-15-02641-PHX-DGC

Member Case: CV-16-00263-PHX-DGC

IN RE: Bard IVC Filters Products Liability Litigation

APPEARANCES: Plaintiff(s) Counsel

**Ramon Lopez, Mark O'Connor,
Daniel Seltz, Wendy Fleishman,
David Wenner, Joshua Mankoff**

Defendant(s) Counsel

**Jim Rogers, Elizabeth Helm,
Richard North, Kristy Gallardo,
Matthew Lerner**

FINAL PRETRIAL CONFERENCE:

1:01 p.m. Court is called to order. Discussion is held regarding juror questionnaires. The parties do not object to the Court's hardship strikes. All jurors listed in Doc. 17210 will be stricken for hardship. Challenges for cause are discussed and ruled on as listed below:

Plaintiffs' Challenges for Cause:

- | | | |
|----------------------|-----------------------|-----------------------|
| • Juror 2 - Granted | • Juror 78 - Denied | • Juror 165 - Denied |
| • Juror 7 - Granted | • Juror 89 - Granted | • Juror 175 - Granted |
| • Juror 12 - Denied | • Juror 92 - Granted | • Juror 177 - Denied |
| • Juror 27 - Granted | • Juror 98 - Denied | • Juror 185 - Granted |
| • Juror 41 - Denied | • Juror 115 - Denied | • Juror 196 - Granted |
| • Juror 63 - Granted | • Juror 125 - Granted | |
| • Juror 74 - Granted | • Juror 157 - Granted | |

Defendant's Challenges for Cause:

- | | | |
|----------------------|-----------------------|-----------------------|
| • Juror 9 - Denied | • Juror 39 - Denied | • Juror 135 - Granted |
| • Juror 18 - Denied | • Juror 83 - Granted | • Juror 139 - Denied |
| • Juror 36 - Denied | • Juror 124 - Granted | • Juror 169 - Denied |
| • Juror 37 - Granted | • Juror 133 - Granted | |

2:08 p.m. Discussion is held regarding trial procedures. The parties are to jointly file a witness list to give to the prospective jurors on the first day of trial, no later than **May 8, 2019**. The Court will call in 50 prospective jurors, with 9 to be seated as jurors on this case. The parties are each permitted 3 peremptory simultaneous strikes. Parties are ordered to review the proposed preliminary jury instructions and voir dire submitted by the Court and shall report to Court on May 13, 2019 at 8:30 a.m. to address any concerns. The trial days will be 5/13/19 to 5/17/19, 5/20/19 to 5/24/19, and 5/28/19 to 5/31/19. The Court allocates 33 hours to Plaintiffs and 30 hours to Defendant. The jury will get the case the afternoon of May 29, 2019. The evidence on punitive damages will be reserved until after the jury renders a verdict. Trial days will run from 9:00 a.m. to 4:30 p.m., with 1 hour for lunch, a break in the morning and a break in the afternoon. The Court will provide the parties with the proposed final jury instructions during trial.

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The Court will apply the learned intermediary doctrine. The Court orders additional briefing from Plaintiffs regarding the ruling on Motion in Limine #1 by the close of business **Wednesday, May 1, 2019**. Response from Defendants is due by the close of business **Friday, May 3, 2019**. The filings shall be no more than three pages. 2:21 p.m. Discussion is held regarding the Proposed Joint Final Pretrial Order. The stipulations will be read to the jury prior to the parties' opening statements. The Court will need the fraudulent concealment claim instruction submitted to the Court no later than **May 6, 2019**. The Court will address defense expert depositions not used by defendant, but used by plaintiffs, as handled in the previous trials. When parties put experts on the stand, they are to provide the Court a copy of the expert's report. Each side is to give the other 48 hours' notice as to what witnesses will be called. Impeachment exhibits are to be given to the courtroom deputy 24 hours before use. The parties are to give 48 hours' notice of deposition excerpts to be played along with the corresponding exhibits. This does not preclude the parties from editing/shortening the video. 2:42 p.m. Court is in recess.

3:00 p.m. Court reconvenes. Discussion continues regarding the Proposed Joint Final Pretrial Order. Dr. Kalva will not be called as an expert witness but rather called as a percipient witness. The Court adopts and approves the Joint Proposed Final Pretrial Order (Doc. 17397). The Court will follow the Wisconsin model instructions. The Court orders Defendants to provide a response to Plaintiffs' arguments on page 2 of Doc. 17357 no later by close of business on **Friday, May 3, 2019**. Discussion is held regarding Mrs. Tinlin's video appearance. Mr. and Mrs. Tinlin will both appear by video for their testimony. The parties shall notify the Court by the middle of this week as to when the Tinlins will be testifying so that final arrangements can be confirmed. Counsel is directed to make arrangements with the courtroom deputy should the Tinlins wish to listen to any portion of the trial by telephone. The preliminary instruction regarding video appearance will need to be edited to include Mr. Tinlin. The Rule of Exclusion is invoked. No witnesses shall be informed of any trial testimony during the pendency of the trial, except expert witnesses. Discussion is held regarding the pending Motion Seeking Establishment of Common Benefit Fee and Expense Accounts. Doc. 16932. The Court informs the parties it will not be able to get a ruling on this for a few months. The parties will submit a proposed order for ruling on the undisputed portions of the motion. Once the disputed portion of the motion is briefed, the Court will resolve the motion as quickly as possible as the Court's calendar permits. The Court grants Plaintiffs' oral request for a week extension to file the reply. Discussion is held regarding the end date of the transfers and direct filings in this MDL case. The deadline for any direct filings and transfers in this case is set for **May 31, 2019**. An order setting this deadline will issue. 3:20 p.m. Case Management Order #42 is discussed. The parties have had no issues regarding the procedure set for tracking the settlement cases. Discussion is held regarding the SNF cases. Attorney Nicole Maldonado addresses the Court. The Court will not dismiss the SNF cases at this time. The Court orders that Ms. Maldonado shall file a report by **July 1, 2019** regarding the status of the remaining SNF cases so that a determination can be made on the best way to proceed on those cases. The parties have no further issues and shall report on May 13, 2019 at 8:30 a.m. for trial. 3:34 p.m. Court is adjourned.

Deputy Clerk: Christine Boucher
Court Reporter: Patricia Lyons

Start: 1:01 p.m.
Stop: 3:34 p.m.
Time in court: 2 hrs. 15 min.